IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10750 of 1994

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.S.R.T.CORPORATION - Petitioner(s)

Versus

MANILAL G PATEL - Respondent(s)

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Appearance :

MR PRANAV G DESAI for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1.
MR JS BRAHMBHATT for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 05/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the order dated 29.10.1993 passed by the Industrial Tribunal, Ahmedabad in

Reference (IT) No.470 of 1991, whereby the said reference was partly allowed.

2.0 The respondent was working as a Conductor with the petitioner Corporation. On 22.07.1988, while the respondent was on duty, the bus was checked by the checking squad of the petitioner and the squad found certain irregularities in the issuance of tickets. Therefore, charge-sheet was issued to the respondent and departmental inquiry was conducted against him. Since the charges leveled against the respondent were proved, he was dismissed from service w.e.f. 21.12.1989.

2.1 The respondent preferred Appeal against the said order before the First Appellate Authority of the petitioner, who by order dated 04.04.1990, modified the order of dismissal, by placing the respondent in the original scale of pay.

2.2 Being aggrieved by the said order, the respondent raised industrial dispute, which, ultimately, came to be referred to the Industrial Tribunal by way of a reference. The Industrial Tribunal, vide impugned order, partly allowed the said reference. Hence, this petition.

3.0 Mr. Upadhyay learned advocate for Mr. PG Desai for the petitioner has submitted that the Tribunal has committed an error in exercising powers under Section 11A of the Industrial Disputes Act, 1947. He has submitted that since the First Appellate Authority of the petitioner Corporation had already taken a lenient view of the matter by reinstating the respondent workman to his original post, the Tribunal ought not to have reduced the punishment.

3.1 Mr. Upadhyay has further submitted that the Tribunal, by passing the impugned order, has almost exonerated the respondent from the charges leveled and proved against him. He has, therefore, submitted that the Tribunal has committed grave error by allowing the reference preferred by the respondent.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. The competent authority of the petitioner Corporation had dismissed the respondent from service since the charges leveled against him were proved. However, the First Appellate Authority of the petitioner had modified the order of dismissal by placing the respondent in his original scale of pay. The Tribunal, while exercising powers under Section 11A of the Industrial Disputes Act, 1947, has reduced the said punishment. In my opinion, the Tribunal has committed serious error in exercising powers under Section 11A inasmuch as the powers which are conferred under Section 11A can be exercised only in case of discharge or dismissal of a workman.

4.1 In the present case, the Tribunal has substituted the order passed by the First Appellate Authority of the petitioner Corporation, by placing the respondent workman in the original scale of pay. Hence, the power exercised by the Tribunal is without jurisdiction. Hence, the impugned order of the Tribunal is illegal and perverse and deserves to be quashed and set aside.

5.0 For the foregoing reasons, this petition is allowed. The impugned order 29.10.1993 passed by the Industrial Tribunal, Ahmedabad, in Reference (IT) No.470 of 1991 is

quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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